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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/644,371	08/23/2000	George E. Smith	108298529US	1295
25096	7590	06/29/2005	EXAMINER	
PERKINS COIE LLP			MEREK, JOSEPH C	
PATENT-SEA				
P.O. BOX 1247			ART UNIT	
SEATTLE, WA 98111-1247			PAPER NUMBER	
			3727	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/644,371

Applicant(s)

SMITH, GEORGE E.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2,4-7,10-12,14-17,19-22,24-26 and 75-83 is/are pending in the application.
- 4a) Of the above claim(s) 8,14-17,20,24 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4-7,10-12,19,21,22,26 and 73-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/31/05
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 and 77 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis for the interface region.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 12, 22, 26, 73-75, 77, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fine (US 4,789,073) in view of Jacob (US 3,514,887) and Nalle, Jr. (US 2,984,035). Regarding claims 73, 74, and 75, Fine, as seen in Figs. 1 and 2 teaches a vessel having a design in one wall of the vessel where the background 30 is between the an inner vessel and an outer vessel and that the inner and outer vessels are transparent. Jacob as seen in Figs. 1-7, teaches a transparent vessel with a design in the bottom of the vessel where the design is between inner and outer layers of the bottom of the vessel. Nalle, Jr. teaches a similar vessel where the vessel can have a

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design in both the bottom and the side of the vessel between inner and outer vessels. It would have to employ the bottom design of Jacob in the vessel of Fine since Nalle, Jr. teaches that vessels can employ both side and bottom designs. Moreover, it would have been obvious to employ the design of Jacob in the vessel in Fine to give the vessel greater utility to provide the revealed message as disclosed by Nalle, Jr. in Col. 1 lines 23-29 in addition to the side wall decoration or design. The modified vessel of Fine has a background on one side of the container and does not have the background on the opposite side of the container. The modified device of Fine satisfies the claim limitation of not having a background in the second region. The region is not defined in the claims and can be any portion of the opposite side. Moreover, Fine does not have any background on the opposite side of the container. Regarding claims 4 and 77, see Figs. 4 and 6 of Fine where the base portion the wall portion and the interface region are integrally formed. Regarding claims 12, 22, and 83, the design of Jacob covers approximately the entire bottom. Approximately is a broad term and allow for a large variation from the entire bottom. Regarding claim 26, see Figs. 3 and 6 of Fine, where the bottom is generally circular and the wall portion has a generally conical lower part. The cylindrical satisfies the limitation since generally conical is a broad term which includes cylindrical. This lower part is adjacent the base. The upper art adjacent to the lower part is generally cylindrical. The shape of the sidewall of Fine as seen I Fig. 6 satisfies the broad claim limitation.

Claims 2 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fine in view of Jacob and Nalle, Jr. as applied to claims 74 and 75 respectively above,

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and further in view of Hultgren (US 3,338,458). Regarding claim 2 and 76, the modified container of Fine does not teach the paint layer for the background. Hultgren teaches a similar decorated container where the decoration can be printed on the inner surface of the outer layer. It would have been obvious to employ the printing of Hultgren in the container of Fine to provide an alternative way to form the decoration. The printed layer satisfies the limitation of a paint layer since there is no structural difference between the two.

Claims 5 and 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fine in view of Jacob and Nalle, Jr. as applied to claim 74 above, and further in view of Biro et al (US 6,015,002). Regarding claims 5 and 78, the modified device of Fine does not teach having a protective coating on the background. Applicant discloses that the protective coating is to prevent UV degradation of the background. Biro et al, as seen in Col. 7, lines 50-55 teaches employing an protective layer for protecting ink from ultra violet light. It would have been obvious to employ the protective layer of Biro et al in the modified device of Lage et al to prevent UV degradation of the ink when used outside or when exposed to sunlight.

Claims 6, 10, 11, 19, 21, 79, 81, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fine in view of Jacob and Nalle, Jr. as applied to claims 73-75 above, and further in view of admitted prior art. The examiner previously took the position of official notice that it is well known to employ a specified color or a single hue. This was not traversed or challenged by applicant and is not admitted prior art. It

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would have been obvious to employ a specific color a single hue to provide reduce the printing cost.

Claims 7 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fine in view of Jacob and Nalle, Jr. as applied to claims 74 and 75 above, and further in view of Olhoft (US 3,766,116). Regarding claims 7 and 80, the modified device of Fine does not specifically teach the opaque ink. Olhoft teaches using opaque ink. It would have been obvious to employ opaque ink in the modified device of Fine to make the background or ink easier to see and to make the background stand out.

Claims 4, 22, 26, 73-75, 77 and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nalle, Jr. (US 2,984,035) in view of Jones (US 5,968,617).

Regarding claims 73-75, Nalle, Jr. teaches the claimed invention but does not teach the second region not having the background or the background being absent from the second region. Jones as seen in Fig. 1, 3 and 7, teaches a similar container where the second region the background in absent. It would have been obvious to employ the opening as taught by Jones in the background of Nalle, Jr. to provide a more visually appealing container. The opening in the background will provide the user to be able to use substantially the entirety of the background in the bottom or the side. The independent claims do not require any particular size for the background. Regarding claims 4 and 77, see Fig. 4 and 6 of Fine. Regarding claim 22, the background of Nalle, Jr. covers the entire base portion. Regarding claims 26 and 83, the vessel of Nalle, Jr. satisfies the claim limitations. The tapered sidewall is generally cylindrical and generally conical.

Claims 2 and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nalle, Jr. in view of Jones as applied to claims 74 and 75 respectively above, and further in view of Hultgren (US 3,338,458). Regarding claim 2 and 76, the modified container of Nalle, Jr. does not teach the paint layer for the background. Hultgren teaches a similar decorated container where the decoration can be printed on the inner surface of the outer layer. It would have been obvious to employ the printing of Hultgren in the container of Nalle, Jr. to provide an alternative way to form the decoration. The printed layer satisfies the limitation of a paint layer as there is no structural difference between the two.

Claims 6, 10, 11, 19, 21, 79, 81, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nalle, Jr. in view of Jones as applied to claims 73-75 above, and further in view of admitted prior art. The examiner previously took the position of official notice that it is well known to employ a specified color or a single hue. This was not traversed or challenged by applicant and is not admitted prior art. It would have been obvious to employ a specific color a single hue to provide reduce the printing cost.

Claims 7 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nalle, Jr. in view of Jones as applied to claims 74 and 75 respectively above, and further in view of Graham et al (US 3,912,100). Regarding claim 7 and 80, the modified container of Nalle, Jr. does not teach the paint layer for the background. Graham et al teaches employing an opaque surface to provide a label or a decoration. It would have

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been obvious to make the sheet of Nalle, Jr. opaque to make the picture or the design stand out or to provide a greater visual impact.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Glancy (US 5,93,170), Yudin (US 5,758,440) and Pyles (US 8,874,977) are all cited for teaching spacing or openings in background material on the side of a container. Ornstein et al (US 3,515,262) is cited for teaching a background material spaced from the bottom of the container where the user can determine the background.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727